Supreme Court, U.S.
FILED
OCT 21 1996
CLERK

(3)

No. 96-447

In The

Supreme Court of the United States

October Term, 1996

DEBORAH A. POPE,

Petitioner,

vs.

LAWRENCE A. POPE, JR.,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Illinois

RESPONDENT'S BRIEF IN OPPOSITION

TIMOTHY B. NEWITT
Counsel of Record
JOHNSON, WESTRA, BROECKER, WHITTAKER & NEWITT, P.C.
Attorneys for Respondent
380 South Schmale Road
Suite 102
Carol Stream, Illinois 60188-2790
(630) 665-9600

9806
Lutz Appellate Services, inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

15pp

TABLE OF CONTENTS

	Page
Statement of the Case	1
Reasons for Denying the Writ	4
I. Even if this Court were inclined to address the issue of a free transcript, this case presents a poor record on which to do so.	4
A. The purported order granting *forma pauperis* was obtained by deceit.	4
B. Deborah is not a pauper.	5
II. The Court should not grant the right to a free transcript in cases such as this.	5
Conclusion	6

TABLE OF CITATIONS

Cases Cited:

Boddie v. Connecticut, 401 U.S. 371	5
M.L.B. v. S.L.J., 95-853	5

APPENDIX

Appendix A — Memorandum Opinion of the Circuit Court of the Eighteenth Judicial Court Dated June 15, 1995	1a

STATEMENT OF THE CASE

Petitioner, Deborah A. Pope, (Deborah) asks this Court to rule that she is entitled to a free transcript of trial court proceedings in order to appeal the judgment of an Illinois divorce court. She implies that there is a terrible injustice to correct here because she lost custody of her child to her ex-husband. She is wrong. As will be more fully shown below, Deborah's contention that her ex-husband was sexually abusing their son was a sham and the trial court correctly ruled that custody should be transferred to the father.

The evidence in the trial court showed that Deborah was intimately involved in causing false reports of child abuse against her ex-husband to be made to the Illinois Department of Children and Family Services, even those made in the first instance by others. She made at least one report directly herself and participated directly in another with an officer from the Carol Stream Police Department. The investigators from the D.C.F.S. who handled these reports testified that they were all unfounded and that the latter reports were labelled for the record: "harassment" or "probable false report."

After four of the ten reports to the D.C.F.S. had been unfounded and Deborah had subjected him to countless instances of visitation interference, Lawrence A, Pope, Jr. (Lawrence) filed his Petition for Change of Custody, requesting Judge Paul Noland of the Eighteenth Judicial Circuit, Dupage County, Illinois to vacate the joint custody order and place sole custody of Lawrence III (Larry) in him. Deborah filed her own petition for custody of Larry. Judge Noland heard thirty-odd days of testimony on these petitions. In addition to the testimony of the D.C.F.S. investigators and their supervisor, this testimony included the following.

Four experts including three Ph.D. Clinical Psychologists and one M.D. Forensic Psychiatrist testified that there was no evidence of abuse of Larry by Lawrence; that Deborah had serious psychological problems and that custody of Larry should be in Lawrence and not Deborah. It is remarkable that none of these experts was selected by Lawrence. Two were selected by or as a result of the actions of Deborah (Drs. Shapiro and Hochstadt) and two were appointed by Judge Noland (Drs. Mesenbrink and Rossiter). Deborah's own expert (Dr. Geffner) was unable to opine that Lawrence was abusing Larry.

Lay witnesses including grandparents, neighbors and friends testified that Larry acted perfectly normally when with Lawrence and strangely when Deborah showed up. Neighbors testified that they would and did entrust their own children to Lawrence's care. The quality and quantity of evidence that Lawrence was not abusing his son and that Deborah was manipulating events to destroy the relation between father and son was overwhelming. Deborah refers frequently in her Petition for Certiorari to alleged errors committed by Judge Noland but fails to specify a single one. Judge Noland's opinion is attached to this brief in the appendix.

The *forma pauperis* order upon which Deborah so heavily relies cannot constitute a valid judicial finding that she is a pauper. The trial of this case lasted from September 1994 to May 1995. The case was at all times during that period assigned to and presided over by the Honorable Paul Noland. During that time, all parties including Deborah were represented by counsel. Deborah's purported pauper order was entered in March 1995. Deborah procured the order on her own. She didn't even bother to tell her own lawyer. No notice was given to anyone else involved in the case including her own counsel and Judge Noland. The order is not in the Circuit Court file and was not signed by Judge Noland.

Apparently Deborah, without telling anyone, went to the Circuit Clerk's office, got a form, filled it out and took it to a Judge in the criminal division who signed it. This can hardly constitute a valid finding that Deborah is in such a state of poverty that she should get a free transcript to appeal her divorce case. This is particularly so because Deborah did and does have assets.

In Deborah's bankruptcy petition, signed by her under penalty of perjury, Deborah told the Bankruptcy Court that she has $91,000 in I.R.A. and retirement funds exempt from creditors. Her application for the pauper order fails to list this asset. She failed to tell Judge Noland, the appellate court, the Illinois Supreme Court and this Court about this asset.

Deborah is again employed on a full-time basis. She lives with her parents and does not pay any rent. She is not without funds and not without assets. Moreover, her argument that she was driven into poverty in an heroic attempt to save her son from his father is absurd. She filed countless petitions before the trial court and forced the filing of countless more by Lawrence because of her baseless denial of his visitation rights. She filed an action in the United States District Court for the Northern District of Illinois against the D.C.F.S. because they would not do her bidding and find child abuse where it did not exist. This action was ultimately dismissed. She hired and fired five lawyers most of whom were not paid their fees. She was frequently absent from the good job she previously had because she insisted on attending every single court date, even those where her appearance was unnecessary. Her own efforts to manipulate the D.C.F.S. and the court system resulted in a large number of court appearances which were completely unnecessary. She has made her own bed and she must lie in it.

Deborah implies that somehow the actions of the guardian

ad litem in this case were improper. There is no basis in the record for this. Deborah attacked the G.A.L. just as she attacked everyone else whom she could not manipulate to her own ends. The G.A.L.'s effort to withdraw had more to do with Deborah's incessant attacks on him and her failure to pay her share of his fee than anything else. In Fact, the G.A.L.'s service to the child and the court was diligent, competent and exemplary in spite of Deborah's attempts to frighten him away.

REASONS FOR DENYING THE WRIT

I.

EVEN IF THIS COURT WERE INCLINED TO ADDRESS THE ISSUE OF A FREE TRANSCRIPT, THIS CASE PRESENTS A POOR RECORD ON WHICH TO DO SO.

A. The purported order granting *forma pauperis* was obtained by deceit.

No court found after a full and fair hearing with notice to all parties that Deborah was actually a pauper. During the time this case was being tried before Judge Noland, Deborah went behind everybody's back and obtained an ex parte order from a different judge who happened at the time to be assigned to the criminal division. Persons who want to initiate an action *in forma pauperis* make such applications with some frequency. This usually happens before any case exists or anyone else is in the case who would be entitled to notice. This is probably what the judge who signed the order thought was happening.

Deborah told no one of her action, not even counsel who represented her at trial, until she petitioned Judge Noland for a free transcript after the trial of the cause. She then produced the

purported order and argued that it should form the basis for the granting of a free transcript. Judge Noland ruled that there was no basis in Illinois law for allowing a free transcript in a civil case. The Illinois Appellate Court denied a similar motion and the Illinois Supreme Court denied leave to appeal the appellate court's order.

B. Deborah is not a pauper.

Deborah is not without funds. As recounted above, she has by her own admission over $91,000 in retirement savings and is employed. There is no valid or reliable finding in the trial court that Deborah is a pauper. In fact, she is not and does have assets. There is therefore no factual basis whatsoever for this Court to find she is entitled to a free transcript.

II.

THE COURT SHOULD NOT GRANT THE RIGHT TO A FREE TRANSCRIPT IN CASES SUCH AS THIS.

Most of the authorities Deborah cites are criminal cases. The Sixth Amendment does not apply to civil cases and there is no authority which even implies that the right to a free transcript should be extended to a case such as this. In *Boddie v. Connecticut*, 401 U.S. 371, all that was at issue was a $60 fee necessary to obtain a divorce in the first instance. Surely Deborah does not contend that this authority should be extended to afford her a $10,000 transcript to appeal a post-judgment change of custody.

M.L.B. v. S.L.J., 95-853 is similarly distinguishable. Deborah did not lose her parental rights. She merely lost custody of her child. The trial court explicitly granted her visitation rights which she exercises. Deborah's statement at

page 26 of her Petition that she has lost access to her child is false.

Extension of the right to a free transcript to this situation would open (dare one say it) a floodgate of requests by every disgruntled divorce litigant who doesn't want to pay for a transcript. The Court should not grant the writ.

CONCLUSION

For the reasons given above, the Court should deny the writ.

Respectfully submitted,

TIMOTHY B. NEWITT
Counsel of Record
JOHNSON, WESTRA, BROECKER, WHITTAKER & NEWITT, P.C.
Attorneys for Respondent
380 South Schmale Road
Suite 102
Carol Stream, Illinois 60188-2790
(630) 665-9600

APPENDIX A — MEMORANDUM OPINION OF THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL COURT DATED JUNE 15, 1995

STATE OF ILLINOIS)
) SS
COUNTY OF DU PAGE)

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL COURT
IN DU PAGE COUNTY, WHEATON, ILLINOIS

No. 88 D 1427

IN RE THE MARRIAGE OF:

DEBORAH A. POPE,

Plaintiff

vs.

LAWRENCE A. POPE, JR.,

Defendant

MEMORANDUM OPINION

The parties in this matter are DEBORAH POPE and LAWRENCE POPE, JR. who were divorced in 1990. Their decree provided for joint custody of their son LAWRENCE POPE, III. with Mrs. Pope as residential custodian and included a joint parenting agreement. The ink had hardly dried on the judgment when the first allegation of sexual abuse was made against the father. This allegation was unfounded by the

Appendix A

Department of Children and Family Services as were nine succeeding allegations. States attorneys and their investigators were involved as well as D.C.F.S. Two judges of this Court imposed periods of supervised visitation upon the father.

Now, both parents have filed petitions for modification of custody, each seeking a judgment of sole custody. The Court has heard testimony from twenty-eight witnesses including the parties, the grandparents, neighbors, babysitters, many investigators, and from seven medical/psychological professionals including five clinical psychologists, a psychiatrist and a pediatrician. The Court also held an in camera meeting with the child.

Additionally, the parties stipulated to the report of Charles P. Golbert of the Office of the Cook County Public Guardian who was appointed Guardian ad Litem for Lawrence Pope III by Judge Conlon of the United States District Court for the Northern District of Illinois in an action brought by Mrs. Pope against D.C.F.S. The testimony of Richard Felice, appointed by this Court as Guardian ad Litem/Attorney for the minor child Lawrence Pope, III., was also submitted by stipulation as were certain school records for the child.

Further, the Court reviewed the stipulated testimony and records of Drs. Steinmark, Kratz, Schaede and Zeddies along with a host of other exhibits admitted into evidence. (The Court notes, parenthetically, that Plaintiff's Exhibit "B" which contains the stipulation with respect to one "Dr. Steinmetz" appears to include a report on Sherman Hospital stationery from a "Richard A. Steinmark, M.D." and presumes that the parties meant Dr. Steinmark and not Dr. Steinmetz.)

Appendix A

The child was subjected by his mother to two interrogations which were videotaped. One was performed in a church basement with a uniformed Cook County Deputy Sheriff asking questions from a list submitted by Mrs. Pope. The other was done at a local cable television station with a reporter asking questions of the child before a live audience. These videotapes were submitted into the record and viewed by the Court.

Finally, the Court heard extensive argument, has reviewed all of the authorities submitted, and has conducted its own research as well and finds as follows:

1. There is no question that joint custody is impossible in this case. A high level of communication and cooperation is required such that parents can put aside their feelings of anger and bitterness toward each other as a consequence of their failed marriage and be able to concentrate on the best interest of the child. Such was not the case here and the parties and Court agree that joint custody will cease.

2. There is no credible evidence of child sexual abuse in this case. Every professional witness including all of the investigators have come to this conclusion. The men and women of D.C.F.S. and the States Attorneys office are well experienced and well trained in their work and the evidence reflects that no effort was spared, in this case. Even Dr. Geffner, who was retained as an expert witness by Mrs. Pope, and who was not shy about criticizing the three court-appointed experts, could not opine that the boy had been sexually abused.

The evidence is uncontroverted that the constant and repeated investigations and examinations for sex abuse are

contrary to the child's best interest and there will be no more of them. All of the professional witnesses who were asked to opine with respect to the videos condemned them and the manner in which they were made. One said it was the most egregious interview of a child in his experience.

Though no law required him to do so, Mr. Pope took and passed a lie detector test which D.C.F.S. had administered to him. The psychologists and psychiatrist who testified have spent decades diagnosing, treating and evaluating in the field of sexual abuse. They are true experts in the field and they failed to find any sexual abuse here.

3. The law which controls the Court's decision in this case is to be found in the Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/610(b). The best interest of the child must be determined by clear and convincing evidence. *Mullins v. Mullins*, 142 Ill. App. 3d 37; *Prince v. Herrera*, 261 Ill. App. 3d 606.

The Guardian ad Litem/Attorney for the child in this case successfully petitioned the Court to order a mental examination of the parties. Pursuant to said order, a psychiatrist, Dr. Lyle Rossiter, was appointed to and did conduct such examinations of both parents and the child. Mr. Pope was found to be normal by the doctor as he was by the other professionals who examined him.

Mrs. Pope, on the other hand, was found to be delusional and suffering from a severe and essentially psychotic disorder which the doctor found to be having highly destructive effects on the growth and development of her son. Dr. Rossiter pointed to certain pleadings which Mrs. Pope filed at a time when she

was pro se (Mrs. Pope was represented by at lease five different lawyers during these proceedings) as expressions of a paranoid thought disorder.

Dr. Rossiter also found the child to have serious mental problems and prescribed long term psychotherapy. He cautioned against any further investigations as did all of the clinical psychologists who agreed with him as to the child's need for psychotherapy.

Dr. Robert Geffner testified on behalf of Mrs. Pope that her relationship with her son seemed appropriate and healthy, that her test results were essentially normal and that he didn't see a need for a change in custody. He found the child in need of therapy. He did not examine Mr. Pope.

Dr. Mesenbrink, who was the Court appointed conciliator, found no diagnosable mental condition with respect to Mr. Pope and found him fit to have custody. Mrs. Pope's failure to complete the MMP1 test rendered it invalid, however he did find her to be extremely defensive and evasive, but did not make a diagnostic conclusion.

The report and testimony of Dr. Hochstadt who was appointed by the federal court and who reviewed all of the investigation and medical/psychological information excepting that of Drs. Rossiter and Geffner is instructive as well with respect to Mrs. Pope. Dr. Hochstadt found the father to be a better caretaker for the child.

The interaction between Mrs. Pope and the D.C.P.S. investigators and Mrs. Chassee, a most competent woman who had investigated over one thousand cases of sexual abuse,

provided key evidence of Mrs. Pope's conduct. The Court concludes from their testimony that Mrs. Pope was most uncooperative and even turned hostile toward them when they determined that Mr. Pope did not sexually abuse the child. Mrs. Pope apparently had a like reaction to the efforts of Dr. Robert Shapiro, a clinical psychologist who had been counselling both parents and the child for quite some time and who was initially introduced to the parties by one of Mrs. Pope's attorneys.

Based on all of the above, the extensive record of attempts to destroy the father's relationship with the child and the bizarre behavior by the mother and especially relying on the testimony of Dr. Rossiter and Dr. Hochstadt, the Court finds that the evidence is clear and convincing that the best interest of the child is that he be placed in the custodial care of his father whom the Court finds to be a fit parent. The Court finds that the child's mental and emotional health would be seriously endangered if he remained in the custody of his mother. It will be further required that the child have therapy by a qualified mental health care provider having no previous connection with the family who will be mandated to report regularly to the Court. In reaching this decision, the Court has reviewed the following opinions, among others: *IRMO Hartman*, 252 Ill. App. 3d, 481; *In Re Koca* 264 Ill. App. 3d 291; *McClelland v. McClelland*, 231 Ill. App. 3d 214; and IRMO Wycoff, 236 Ill. App. 3d 408.

4. Mrs. Pope will be awarded visitation which will be supervised for an indeterminate period and until further order of Court. She will be required to undergo psycotherapy as a condition of such visitation. It will be sufficient that the maternal grandparents, Mr. & Mrs. Isitoro, be approved supervisors if they are willing to do so. If they are so willing, counsel for Mrs. Pope should make their willingness known to the Court and appropriate rules will be implemented.

Appendix A

5. The Court declines to issue a Rule to Show Cause at this point against Mrs. Pope. There is no question in the Court's mind that there have been violations of Court orders with respect to visitation but it well may be that they, were not volitional given the evidence and circumstances.

Mr. Newitt is directed to draft an appropriate order, communicate its contents to Ms. Grahn-Hayes and present it to the Court for entry as soon as possible. The Court wants to express its thanks to all counsel for the competent and largely civil manner by which they accorded themselves during this extensive, arduous trial. Mr. Felice is instructed to present his fee petition to the Court and a hearing date will be set.

ENTER:

s/ Paul Noland
Judge

June 15, 1995

cc: Timothy Newitt, Esq.
James Wyer, Esq.
Carole Grahn-Hayes, Esq.
Richard Felice, Esq.